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Bill Anoatubby
Governor

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Lieutenant
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September 28, 2015

The Honorable Marlene H. Dortch, Secretary
Federal Communication Commission
445 12 St SW, Room TW-A325
Washington, DC 20554

RE: WC Docket 11-42 Lifeline and Link Up Reform and Modernization,
WC Docket 09-197 Telecommunications Carriers Eligible for Universal Service Support,
and
WC Docket 10-90 Connect America Fund

Dear Secretary Dortch,

We, the Tribal representatives of the Native Nations Broadband Task Force (NNBTF or Task Force), are comprised of elected and appointed Tribal representatives from across Indian Country and now formally submit this reply comment filing to provide the Federal Communications Commission, (Commission), a collective response to the June 22, 2015 Second Further Notice of Proposed Rule Making, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, WC Dockets 11-42; 90-197; and 10-90 (Order and/or FNPRM).

The FNPRM's focus on the Lifeline program presents objectives we both enthusiastically applaud and deeply oppose. The FNPRM is progressive to reassert the purpose of the Lifeline program and continued Modernization efforts. This FNPRM now seeks comments to implement meaningful reforms to restore fiscal responsibility while at the same time, acknowledging that over the past few years - the Lifeline program has become more efficient and effective through the combined efforts of the Commission and the states.

We take this opportunity to collectively provide formal comments to this FNPRM. The NNBTF comment will assist the Commission make a more informed decision regarding Lifeline and Link Up Reform and Modernization. The Lifeline Program provides an important contribution to the monthly income challenges of low income families in supporting connectivity for those households across the country, and the Tribal Lifeline program provides additional subsidy across Indian Country where it is widely recognized a greater percentage of consumers live in



God Bless America!

low to very low income households. Today, and every day since the Commission first created the program in 2000, Lifeline is a program aimed at addressing the affordability of services. Link Up remains a very important program in Indian Country alone, where the deployment of communications technologies continues to lag behind the Nation as a whole. Along with Link Up, the critically essential role of the Tribal Lifeline program in helping poor families who live in Indian Country obtain and keep communications services cannot be overstated. Lifeline is essential to many homes in Indian Country.

Throughout the FNPRM, the Federal Communications Commission seeks comment on a wide variety of topics related to Lifeline reform. The NNBTF acknowledges the FCC's Office of Native Affairs and Policy (ONAP) for continually demonstrating objectivity and diligence as the "policymaking and physical embodiment of the Commission's commitment to Indian Country." The NNBTF met August 26th & 27th, 2015, at the Commission and discussed primarily the reforms to the Lifeline and Link Up programs. In meeting with a representative of the Chairman's Office, and the Offices of Commissioners, including with Commissioner Pai himself, the Commission asks us to "speak up for the record" to the Lifeline Reform Order and FNPRM.

This Order and FNPRM documents a combined effort between the FCC and the states to focus on a meaningful reform, but without any government-to-government consultation with Tribal Nations prior to its conclusions and open-ended insinuations. The NNBTF verbally notified ONAP and various professional staff from the Wireline Competition Bureau and its Telecommunications Access Policy Division, and from across the Commissioner's Offices, that we took exception to various items which asserted conclusions and assertions in the Order and FNPRM, including those based on reports from the National Lifeline Accountability Database (NLAD). Those conclusions released in this FNPRM are intended to certainly streamline the administration of the Lifeline and Tribal Lifeline program; however, the NNBTF interprets such actions for comment as anti-Tribal Government.

The entire portrayal of the Tribal Lifeline program throughout the Order and FNPRM casts and scrutinizes the program and Tribal Nations as the problem, rather than as a governmental partner or solution. The waste, fraud, and abuse visited on the program by unscrupulous service providers of Lifeline and Link Up is addressed in a broad brush approach. This portrayal suggests recasting of the original intent and import of the program. We do not support any actions taken to diminish the program and forego the Commission's responsibilities to low income persons and Tribal Nations alike. This Order and FNPRM myopically and self-importantly seeks to apply shotgun measures to achieve the Commission's fiscal responsibility on the backs of those members of Tribal Nations who families live in poverty in the poorest parts of our Nation. The Commission should reverse the direction of its Order and FNPRM, revisit its own statutory and regulatory values, at both the political and professional bureau level, and endeavor to work with Tribal and impoverished communities, rather than punish them in paternalistic fashion.

We provide the following comments on the record regarding issues of particular across Indian Country.

The Commission should establish minimum service levels for voice and broadband for low income residents living on Tribal lands, and make broadband services in Indian Country equal to the rest of the Nation.

We applaud the Commission's recognition that access to broadband is a modernization effort that will offer a step up to Lifeline benefactors. We encourage the Commission to create a minimum standard equivalent with the nationally recognized standard of 10 Megabits per second download and 1 Megabit per second upload (10/1) as a near term standard. We expect the minimum standard for broadband access to grow consistently with offerings in more affluent markets to ensure those less fortunate are not left behind in a modernized digital landscape. The Commission should make every effort to ensure that households in rural America and Indian Country should have exactly the same level of service as those in big cities. Just as with basic telephone service in the past, broadband has become a fundamental necessity in modern society.

The NNBTF agrees that it would be appropriate to develop an objective, data-based methodology for establishing minimum service levels for voice and broadband for low income residents living on Tribal lands. The concern is misinterpretation of statistics or incomparable definitions or deliberately misinterpreting data. We simply ask FCC assurance that the data-based methodology to have integrity, objectivity, and accuracy. Did the deployment of NLAD three years ago achieve its primary objective in preventing multiple carriers from receiving support for the same household? NLAD may have missed its mark, based on the experiences of many Tribal Nations having non-facility-based wireless-reseller telecommunication operators coming to Reservations promoting their free-phones during cultural events and Tribal meetings. We saw no acknowledgement in the FNRPM to the unfair facility-based competition based on their Partner Substitutability and Alliance Network Structure(s) with carriers. The NLAD should have been made available and applicable to these non-facility based wireless reseller operators.

With respect to the 10/1 standard, we note, however, that in more rural/remote locations across Indian Country, Alaska villages in particular, it may not be possible to deploy in a cost effective manner broadband connectivity meeting the 10/1 standard. In the State of California, the minimum standard for educational institution connectivity is 6/1.5; this minimum was established in collaboration with the State Department of Education to insure students had access to broadband speeds suitable for completion of homework assignments. We urge the Commission to recognize that in extreme rural and high cost areas of Indian Country the Enhanced Lifeline value of \$ 25.00 per household is an insufficient amount to incentivize broadband infrastructure build out. Therefore, applying the 10/1 standard nationally would likely result in massive exclusions of Alaskan communities as compliant deployment would, in our opinion, not occur. We urge the Commission to consider an even further enhanced subsidy rate structure in areas across Indian Country with deployment challenges due to the remote nature of the landscape (i.e. Alaskan villages).

Thus, the NNBTF agrees with the Minimum Service Standards for Voice and Broadband to ensure maximum value for each dollar of universal service and that consumers receive reasonably comparable service as a result of sufficient competition. We understand the steady increase in adoption for 10/1 Mbps level of service and the decline in wireline voice service and increased wireless voice services. The NNBTF supports updating standards and compliance based on the *evolving levels of broadband based services*, and we strongly encourage adoption of the 10/1 Mbps as the minimum service level for Broadband Service.

The Commission should further augment the Lifeline and Link Up programs on Tribal lands and analyze it in light of the true purpose of the programs: Affordability.

When the Commission created the Tribal Lifeline and Link Up programs in June of 2000, in its Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, CC Docket No. 96-45 (Twelfth Report and Order), the Commission relied heavily on an approach and analysis for the development of these Tribal Lands Low Income Programs as affordability programs. It only passingly referred to Lifeline as an infrastructure program. Within the Commission, infrastructure deployment is for a responsibility of other programs. One can plainly read the Commission's intent, and thus the role of Lifeline and Link Up as low income programs, throughout the entire Twelfth Report and Order. Yet now, the Commission asks in an open ended way, without proposing a solution, as to the impact of the additional \$25 per month per household. The Commission seeks to revise its own underpinnings of the program and have it regarded in hindsight as an infrastructure program. The Commission has thus signaled that it would diminish the program, suggesting that the Tribal Lifeline program has not met some unstated goals.

But this is not appropriate, and this Task Force of Tribal Nations deeply opposes diminishing the program, as the Commission created the Tribal Lifeline Program to address affordability. The Commission said so itself, plainly, in paragraph 44 of the Twelfth Report and Order, when it stated "Our primary goal, in taking this action, is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service." A review of the entire Twelfth Report and Order is consistent with the Commission's primary goal as stated in paragraph 44.

When the Commission created the Tribal Lifeline program, it designed the program, and provided an analysis, in order to bring the cost of basic monthly rates in the majority of locations on Tribal lands down to \$1 dollar per month. This became the famous dollar-a-month program in Indian Country. While the Commission could not make it a dollar everywhere, it did so for a majority of households on Tribal lands. Paragraphs 42 through 52 of the Twelfth Report and Order plainly reveal this. To be sure, the Commission references its hopeful anticipation, in three short paragraphs lacking analysis or import that the Lifeline program will result in more deployment of infrastructure. We all shared that hope. But this was not the primary intent or design.

Thus the NNBTF recommends that the Commission undertake to augment, not diminish, the Lifeline program by analyzing to deliver an amount in the program per month that will bring the cost of basic monthly broadband service down to a basic monthly cost of \$5 dollars. In its efforts

to modernize the program, the Commission should not turn its back on its goals of making broadband services affordable and available on Tribal lands nationwide. In the face of

waste, fraud, and abuse, the Commission should not seek to diminish the primary goal or stated values of the program.

Efforts to reduce waste-fraud- abuse of the Lifeline system by removing the Tribal-specific eligibility criteria are completely misguided, and the Commission should retain these critically important Tribal eligibility criteria.

To best ensure the most vulnerable consumers of the Lifeline program are served in the most efficient manner we respectfully request the Commission not remove the programs that Tribal individuals on Tribal lands utilize the most in qualifying for Lifeline support. The longstanding, federally accredited institutions of the Food Distribution Program on Indian Reservations (FDPIR); Tribal Temporary Assistance for Needy Families (TTANF); Bureau of Indian Affairs General Assistance (GA); Head Start; Supplemental Nutrition Assistance Program (SNAP); and Medicaid are currently functioning in this arena. In many places across Indian Country, Tribal Nations directly administer these programs. In Tribal communities the Tribal Government administrators of these programs know the community, thereby reducing the potential of waste-fraud-abuse to Lifeline subscribership. The Tribal specific eligibility criteria, TTANF, GA, Head Start, and FDPIR, which was only added in 2011, is absolutely essential to the healthy operation of the Tribal Lifeline program with respect to the program's stated goal of ensuring affordability in Indian Country. We point out that the Tribal Lifeline program is a Reservation- or Tribal lands-based program ensuring all low income qualified consumers, including the most vulnerable, are connected. To remove the familiar, local, Tribal-specific, Reservation- and Tribal lands-based and Tribal entity provided eligibility criteria in Tribal communities would be an incorrect step. It would add another layer of obstacle to the program, where the most vulnerable consumers are forced to yet again shine a light on their need and degradation. To cause low income families on Tribal lands a greater challenge in demonstrating eligibility is a step in the wrong direction. When Tribal Governments and Tribal people read the open-ended question offered by the Commission as to what the impact would be if these Tribal-specific eligibility criteria were removed from the program, we are aghast at having to answer such an obvious question. It would be wholly detrimental. It appears that the Commission wishes to presumptively de-enroll many legitimately qualified low-income households from the Tribal Lifeline program, and wants Indian Country itself to justify why the Commission should do so. We cannot provide such justification, nor can the Commission. Thus, we reiterate to the Commission, do not remove these eligibility criteria that function, and function so efficiently, in Tribal communities.

The Commission seeks to restrict the focus of Lifeline and withdrawal from the goals it established in FCC 00-208, 12th Report & Order, June 8, 2000 by carving into Tribal lands.

Again, within the Twelfth Report & Order, the Commission's "...primary goal, ... is to reduce the monthly cost of telecommunications services for qualifying low income individuals on tribal lands..."To suggest in the NPFRM that it is somehow inappropriate to serve low income consumers in areas of higher density within Tribal lands is deeply offensive and ignores both

history and federal policy with respect to Tribal Nations. The exclusion of urban areas within Tribal lands is proposed effectively as a carve out of areas within delineated federally recognized

Tribal lands as established in treaties and in Acts of Congress, or Executive Orders for each unique Tribal Nation. By suggesting that issues of waste, fraud, and abuse issue should be solved through an uninformed and unilateral redesign of the Tribal lands borders based upon an undefined level of population density is an uninformed and blatant attack on Tribal communities and the sovereignty of Tribal Nations. Again, here the Commission is seeking to retroactively redefine the goals of Lifeline to be an infrastructure development program. Certain urban areas are within Tribal lands provide economic centers and job opportunities, in addition to opportunities for educational attainment and workforce development. As the Commission has insultingly referenced the "truly poor" time and again, the Commission's proposal here would say to poor Tribal members that they should remain poor and rural.

Comments made by Commissioner Pai both during his remarks upon the Commission's adoption of the Order and FNRPM and at his meeting on August 27, 2015 meeting with the Native Nations Broadband Task Force that focus on the lifeline program as being based on providing an incentive to build out across rural areas are, from our perspective, another negative contortion of the original intent of Lifeline as a Tribal lands-based support program for low income consumers. We find Commissioner Pai's suggestion that, "...taxpayer support shouldn't go to support non-Tribal members in urban areas" disconnected with the reality of life on Reservations. In particular, his suggestion that areas with more population density than fifteen people per square mile be removed from Lifeline eligibility would carve out vast areas of Indian Country within the contiguous 48 states and virtually every Alaskan Native Village, where often an entire population in remote and impoverished villages lives within one to two square miles. This is a clear attack on Commissioner Pai's part to the programmatic intent to provide services to all low income consumers across Tribal lands. While Commissioner Pai says he respects Tribal Nations, his deeds tell us otherwise. We appreciate, however, that Commissioner Pai met with us on this issue, and appreciate that he actually sat at the table to engage with us, when certain others would not.

It is critical the Commission recognize that by limiting the Enhanced Lifeline subsidy in carved out sections of Indian Country will be contrary to the program intent. By suggesting the Enhanced Lifeline subsidy be limited to Tribal members only will result in service offering to a smaller population across many Reservations; as Tribal membership is strictly controlled by individual Tribes based on blood quantum, therefore otherwise qualifying non-Tribal member descendants and non-Tribal consumers living on the Reservation would be excluded. Here again, the suggested solution of the Commission would run counter to the stated goals of the program. To remove qualified persons from the program would only discourage carriers from providing this important service on Tribal lands.

We stress that measures that balance the budget on the backs of the poorest and most vulnerable is unacceptable and disregards the current unserved and underserved areas nationwide. Here again, it appears that the Commission wishes to presumptively de-enroll many qualified low-income households from the Tribal Lifeline program, and wants Indian Country itself to justify why the Commission should do so. We cannot provide such justification. If the Commission chooses to

ignore our request and implement the proposed exclusion, we bring attention to the need for a transition process which will be critical in enabling the affected low-income consumers to transition to non-supported services with limited disruption.

What is perhaps most disturbing, however, is that this is not just the misguided idea of Commissioner Pai alone. It would appear that Commissioner Pai is motivated to make political grandstanding his primary purpose rather than historical or legal accuracy. While we respectfully disagree with him, we are further troubled and insulted that this, another open-ended proposal to diminish the Tribal Lifeline program, is found in the NPRM to which Commissioner Pai wholly dissented. It is thus the majority's proposal as well. Why is the Commission as a whole undertaking such an attack on Tribal Nations and their lands? Commissioner Pai indicated he thinks that the Commission will not act on his proposal because it is in the FNPRM, we wonder why it is there in the first place. As it occurs in the Commission's FNPRM however it is the entire Commission's proposal, and we oppose it entirely.

The Commission's defining Former Reservations in Oklahoma and Adoption of a new Map of Tribal lands in Oklahoma is Wholly Unacceptable.

We consider the Commission's action in excluding recognized Tribal lands across Oklahoma a blatant disregard of Tribal sovereignty, history, and federal Indian policy--including the Commission's. The Commission's actions, taken without prior government-to-government consultation or cooperation with Tribal Nations, to limit the areas across Indian Country from eligibility under Lifeline, the Former Reservations of Oklahoma, is not acceptable. It appears that the Commission has taken leave of even its own Tribal consultation policy as outlined in its 200 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, FCC 00-207. The Commission must recognize that by taking action against Tribal Nations in this manner is deeply insulting to Tribal leaders and detrimental to the operations of Tribal Governments. In the Twelfth Report & Order, Tribal lands were specifically identified as "...any federally recognized Tribe's Reservation, Pueblo, or Colony, including former reservations of Oklahoma" as well as "near reservation areas". We interpret this as including all areas of Oklahoma except old Greer County and the Panhandle. That the Order now excludes the Cherokee Outlet and the Oklahoma Country and central portions of the state from the definition of former reservations in Oklahoma is a gross misinterpretation of the historic placement of Tribes across Oklahoma.

This is not a "process foul," as a representative of the Chairman's Office suggested to us in meeting with us on August 27th. Consultation with Tribal Nations is not a process to be disregarded, and then retroactively regarded as something that should have happened. It is a foul, pure and simple, and one that offers a very deep and virtually unforgivable offense. The Commission's actions to presumptively change Tribal lands smack of a bygone era of the misdeeds and theft of Tribal lands in Oklahoma and indeed across Indian Country, when paternalistic national policy motivations and individually racist local transgressions were jointly based on the unjustified fake ethics of the bygone excuse of manifest destiny. Another era, yes, but these actions end in an all too familiar and historically unjust result. Yet again, something that was given is taken back, and yet again, land is taken away. In the light of a program that provides critically necessary household

communications to the poorest in our national society, it is unconscionable that the Commission, undoubtedly knowledgeable of the history of Indian Country and of the great unjust historical losses of Tribal lands, would be so callous and brash. It is not an unfamiliar map, as Tribal Nations know their own history. And to be sure, the Commission intends to discuss the matter of the newly adopted map with Tribal Nations, but wholly and completely after the fact of their adoption of it. Tribal Nations are instead asked by the Commission to justify their own histories and borders, and the Commission's Wireline Competition Bureau will judge that history and make changes only if and where necessary. Tribal Nations had no notice, or opportunity to comment, much less consult, on such a paternalistic and insulting action.

As Tribal leaders, we are angered by the action to limit areas originally included in the Lifeline program focused on Indian Country and we request the Commission reconsider and work proactively with us to develop a collaborative outcome to reduce the identified waste, fraud, and abuse in the Lifeline program. This arbitrary and capricious action has not been initiated in the spirit or letter of consultation, and has us, representatives of Tribal communities, in a harmed, defensive and reactionary position. Here yet again, it appears that the Commission wishes to presumptively de-enroll many, many legitimately qualified low-income households from the Tribal Lifeline program, and wants Indian Country itself to justify why the Commission should do so. We cannot provide such justification. This is a most perverse twist of federal Indian policy by the Commission, and, while not in keeping with the most recent trends of its efforts to train and consult with Tribal nations, it cannot be excused. The Commission should reverse its Order adopting their new map, and re-engage with the Tribal Nations of Oklahoma in a more appropriate and correct "consultative, cooperative, and collaborative" manner.

It is clear that the Commission sees reducing Tribal lands and removing Tribal-specific eligibility criteria as a method to reduce the number of qualified individuals on the Lifeline and Link up programs, and thereby also as methods of addressing the waste, fraud, and abuse of these programs. Is the map of Indian Country truly a problem for the Commission? Why does the Commission want to reduce the number of qualified individuals legitimately on the program, and especially in times of such economic uncertainty as these? In the Commission's focus on reducing waste, fraud, and abuse of the Lifeline subsidy, we urge the Commission to consider the activities of non-facility based wireless reseller providers. The waste, fraud, and abuses are exacerbated across Indian Country by the predatory and aggressive marketing strategies of non-facility-based wireless reseller providers whose services are offered without regard to rules and on the back of previously deployed infrastructure with no interest or commitment to provide infrastructure enhancements on Tribal lands. Given the Commission's desire to enhance support to incent the deployment of facilities on Tribal lands the non-facility based providers must be removed from offering Lifeline and Link Up services on Tribal lands.

We, the Native Nations Broadband Task Force, which includes representatives from across Indian Country, are committed to proactive, collaborative consultation with the Commission on all matters affecting tribal lands. We reiterate that to attempt to root out waste, fraud, and abuse of the Lifeline program on the backs of the most vulnerable is unacceptable.

We respectfully provide the Commission with our collective response to its request for comments on the June 22, 2015 Second Further Notice of Proposed Rule Making, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, WC Dockets 11-42; 90-197; and 10-90.

Sincerely,


A handwritten signature in black ink, appearing to read "Jefferson Keel", is written over a horizontal line.

Jefferson Keel

Lieutenant Governor of the Chickasaw Nation

Co-Chair FCC Native Nations Broadband Task Force